IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.739 OF 2000

Deepak alias Kalya Mahadeo Bhuwad
Circle No.I, Yeravada Central Prison
Pune - 411 006 ... Appellant

V/s.

The State of Maharashtra
(At the instance of Nana Peth
Police Outpost) of Samarth Police
Station ... Respondent

Ms.L.P. Khemani for Appellant
Ms.P.H. Kantharia, APP, for Respondent

CORAM: **V.G. PALSHIKAR &**
SMT.NISHITA MHATRE, JJ.

DATED: **MARCH 15, 2005**

ORAL JUDGMENT (PER MHATRE, J.):

. This Appeal has been filed against the conviction of the appellant under section 302 of the Indian Penal Code. The appellant has been sentenced to life imprisonment and a fine of Rs.100/- and in default is ordered to suffer rigourous imprisonment of three months.

2. The case of the prosecution is that the appellant and 6 others, including the victim Anil routinely sifted garbage from various dumps in order to salvage damaged goods and articles which could be recycled. After consuming liquor, they would return to

the garbage dump to have their lunch. This was their daily routine. On 23.8.1999, the appellant demanded a share from the sale of a silver ring which the deceased had found while sifting the garbage on that day. On being denied this demand, the appellant threatened to teach the victim a lesson once the latter went to sleep. The charge against the appellant is that while the deceased, Anil was sleeping, the appellant hit him with a stone which caused a bleeding injury on the head and the deceased succumbed to this injury. The Sessions Court has accepted the case of the prosecution and relying on the evidence of PW5, who was an eye witness to the incident, has found that the appellant was guilty of culpable homicide amounting to murder and has therefore, sentenced him to life imprisonment. The defence of the appellant that the deceased, having fallen on the stone, sustained an injury resulting in his death, has been disbelieved by the trial Court.

3. Eight prosecution witnesses were examined before the trial Court. PW1, the police photographer, has proved that he had photographed the scene of the incident and the dead body of the victim Anil. PW2 is the Panch witness who has proved the spot panchnama and the seizure of the stone with which the deceased was hit. PW3 is a shop owner in the vicinity who heard a cry and on coming out of his shop saw a corpse lying in

a pool of blood. PW4 is the Police Officer who complained about the offence and has prepared the spot panchnama in the presence of PW2. PW5 Shivaji is the material witness who has witnessed the incident. The arrest panchnama was drawn in the presence of PW6. PW7 is the Doctor who performed the Post Mortem. PW8 arrested the appellant.

4. The main contention raised on behalf of the appellant is that the appellant had neither the motive nor the intention to commit an offence punishable under section 302 of the Indian Penal Code. It was, therefore, urged that, the prosecution having failed to establish either of these ingredients, the appellant was not guilty as charged. The learned Counsel for the appellant criticised the prosecution for not having examined the other rag pickers who were present when the incident allegedly took place. She also urged that the possibility of the victim having sustained a fatal injury after falling on the stone in a drunken stupor could not be ruled. She, therefore, submitted that the appeal be allowed and the appellant be acquitted.

5. The learned Additional Public Prosecutor countered these submissions by pointing out that there was certainly a motive for the offence and that the appellant had committed the offence premeditatedly. She

submitted that the appellant had committed the offence because the victim, Anil had refused to part with a silver ring which the latter had found while sifting through the garbage.

6. We have perused the evidence at great length and find that the Sessions Court has erred in concluding that the appellant had committed an offence punishable under section 302 of IPC. PW5, Shivaji, a rag picker like the appellant and the victim, has deposed that on the day of the incident, he and his colleagues including the victim and the appellant had, after selling off the damaged and reusable goods which they had collected during the morning, returned to the garbage dump in Nanapeth for lunch. They had consumed alcohol before that. While having lunch, the appellant demanded the silver ring from Anil, who refused to oblige. The deceased also refused to share his lunch with the appellant. This witness has further deposed that after the deceased went to sleep, the appellant hit him on the head with a stone, causing a bleeding injury. He has testified that he left the place after the incident alongwith the appellant and three other rag pickers who were also present. He has also deposed to the fact that although the deceased did not cry out after being hit on the head with the stone, he moved his limbs about for some time. He has denied a suggestion put to him on

behalf of the appellant that the deceased fell on this stone in his drunken stupor and sustained the injury.

7. PW7, the Medical Officer, who performed the post mortem has denied the suggestion of the defence that the injury could have been caused to the deceased on account of a fall on the stone. The arrest panchnama indicates that the appellant was apprehended with blood stained clothes.

8. There is no doubt that the appellant had caused an injury to the deceased by striking him on the head with a stone. Although the victim died thereafter, we do not find that there was any intention on the part of the appellant to commit the offence punishable under section 302 of Indian Penal Code. There was neither any motive nor any intention on the part of the appellant to kill the deceased. The prosecution has not examined any other rag picker to prove these facts. Although the appellant had threatened the deceased because he had not parted with the silver ring which he had found while sifting garbage, it could not be said that the appellant committed the act of culpable homicide amounting to murder. In our view, the learned Judge of the Sessions Court was in error in convicting the appellant under section 302, IPC. The conviction and sentence under

section 302 IPC are, therefore, set aside.

9. However, this would not necessarily mean that the appellant has not committed any offence. There is no doubt that the appellant has assaulted the victim, Anil with a stone thereby causing grievous hurt. This fact has been proved through the testimony of the eye witness, Shivaji. It has also been established that the appellant committed the offence, on the victim denying him the silver ring. We, therefore, find the appellant guilty of the offence punishable under section 326 of the Indian Penal Code.

10. The Appellant has already been in jail for the last 5.1/2 years, which we feel is adequate punishment for the offence. The Appellant is, therefore, directed to be released forthwith, if not otherwise required.

11. Appeal is allowed to the above extent and disposed of accordingly.